

SECTION III: SHORELAND MANAGEMENT ORDINANCE

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Subdivision 1.0 – Statutory Authorization and Policy

1.1 Statutory Authorization

This shoreland ordinance is adopted pursuant to the authorization and policies contained in Minnesota Statutes, Chapter 103F, Minnesota Regulations, Parts 6120.2500 - 6120.3900, and the planning and zoning enabling legislation in Minnesota Statutes, Chapter 394.

1.2 Policy

The uncontrolled use of shorelands of Yellow Medicine County, Minnesota affects the public health, safety and general welfare not only by contributing to pollution of public waters, but also by impairing the local tax base. Therefore, it is in the best interests of the public health, safety and welfare to provide for the wise subdivision, use and development of shorelands of public waters. The Legislature of Minnesota has delegated responsibility to local governments of the state to regulate the subdivision, use and development of the shorelands of public waters and thus preserve and enhance the quality of surface waters, conserve the economic and natural environmental values of shorelands, and provide for the wise use of waters and related land resources.

Subdivision 2.0 - General Provisions and Definitions

2.1 Jurisdiction

The provisions of this ordinance shall apply to the shorelands of the public water bodies as classified in Subdivision 4.0 of this ordinance. Pursuant to Minnesota Regulations, Parts 6120.2500 - 6120.3900, no lake, pond, or flowage less than 25 acres in size in unincorporated areas needs to be regulated in a local government's shoreland regulations. A body of water created by a private user where there was no previous shoreland may, at the discretion of the governing body, be exempt from this ordinance.

2.2 Compliance

The use of any shoreland of public waters; the size and shape of lots; the use, size, type and location of structures on lots; the installation and maintenance of water supply and waste treatment systems, the grading and filling of any shoreland area; the cutting of shoreland vegetation; and the subdivision of land shall be in full compliance with the terms of this ordinance and other applicable regulations.

2.3 Enforcement

The Zoning Administrator is responsible for the administration and enforcement of this ordinance. Any violation of the provisions of this ordinance or failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with grants of variance or conditional uses) shall constitute a misdemeanor and shall be punishable as defined by law. Violations

of this ordinance can occur regardless of whether or not a permit is required for a regulated activity pursuant to Subdivision 3.1 of this ordinance.

2.4 Interpretation

In their interpretation and application, the provisions of this ordinance shall be held to be minimum requirements and shall not be liberally construed in favor of the governing body and shall not be deemed a limitation or repeal of any other powers granted by State Statutes.

2.5 Severability

If any subdivision, clause, provision, or portion of this ordinance is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this ordinance shall not be affected thereby.

2.6 Abrogation and Greater Restrictions

It is not intended by this ordinance to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance imposes greater restrictions, the provisions of this ordinance shall prevail. All other ordinances inconsistent with this ordinance are hereby repealed to the extent of the inconsistency only.

2.7 Definitions

Unless specifically defined below, words or phrases used in this ordinance shall be interpreted so as to give them the same meaning as they have in common usage and so as to give this ordinance its most reasonable application. For the purpose of this ordinance, the words "must" and "shall" are mandatory and not permissive. All distances, unless otherwise specified, shall be measured horizontally.

2.711 Accessory structure or facility. "Accessory structure" or "facility" means any building or improvement subordinate to a principal use which, because of the nature of its use, can reasonably be located at or greater than normal structure setbacks.

2.712 Bluff. "Bluff" means a topographic feature such as a hill, cliff, or embankment having the following characteristics (an area with an average slope of less than 18 percent over a distance for 50 feet or more shall not be considered part of the bluff):

- (1) Part or all of the feature is located in a shoreland area;
- (2) The slope rises at least 25 feet above the ordinary high water level of the waterbody;
- (3) The grade of the slope from the toe of the bluff to a point 25 feet or more above the ordinary high water level averages 30 percent or greater; and
- (4) The slope must drain toward the waterbody.

2.713 Bluff impact zone. "Bluff impact zone" means a bluff and land located within 20 feet from the top of a bluff.

2.714 Boathouse. "Boathouse" means a structure designed and used solely for the storage of boats or boating equipment.

2.715 Building line. "Building line" means a line parallel to a lot line or the ordinary high water level at the required setback beyond which a structure may not extend.

2.716 Commercial planned unit developments. "Commercial planned unit developments" are typically uses that provide transient, short-term lodging spaces, rooms, or parcels and their operations are essentially service-oriented. For example, hotel/motel accommodations, resorts, recreational vehicle and camping parks, and other primarily service-oriented activities are commercial planned unit developments.

2.717 Commercial use. "Commercial use" means the principal use of land or buildings for the sale, lease, rental, or trade of products, goods, and services.

2.718 Commissioner. "Commissioner" means the Commissioner of the Department of Natural Resources.

2.719 Conditional use. "Conditional use" means a land use or development as defined by ordinance that would not be appropriate generally but may be allowed with appropriate restrictions as provided by official controls upon a finding that certain conditions as detailed in the zoning ordinance exist, the use or development conforms to the comprehensive land use plan of the community, and the use is compatible with the existing neighborhood.

2.720 Deck. "Deck" means a horizontal, unenclosed platform with or without attached railings, seats, trellises, or other features, attached or functionally related to a principal use or site and at any point extending more than three feet above ground.

2.721 Duplex, triplex, and quad. "Duplex," "triplex," and "quad" mean a dwelling structure on a single lot, having two, three, and four units, respectively, being attached by common walls and each unit equipped with separate sleeping, cooking, eating, living, and sanitation facilities.

2.722 Dwelling site. "Dwelling site" means a designated location for residential use by one or more persons using temporary or movable shelter, including camping and recreational vehicle sites.

2.723 Dwelling unit. "Dwelling unit" means any structure or portion of a structure, or other shelter designed as short- or long-term living quarters for one or more persons, including rental or timeshare accommodations such as motel, hotel, and resort rooms and cabins.

2.724 Extractive use. "Extractive use" means the use of land for surface or subsurface removal of sand, gravel, clay, topsoil, rock, industrial minerals, other nonmetallic minerals, and peat not regulated under Minnesota Statutes, Subdivisions 93.44 to 93.51.

2.725 Forest land conversion. "Forest land conversion" means the clear cutting of forested lands to prepare for a new land use other than reestablishment of a subsequent forest stand.

2.726 Guest cottage. "Guest cottage" means a structure used as a dwelling unit that may contain sleeping spaces and kitchen and bathroom facilities in addition to those provided in the primary dwelling unit on a lot.

2.727 Hardship. "Hardship" means the same as that term is defined in Minnesota Statutes, Chapter 394.

2.728 Height of building. "Height of building" means the vertical distance between the highest adjoining ground level at the building or ten feet above the lowest ground level, whichever is lower, and the highest point of a flat roof or average height of the highest gable of a pitched or hipped roof.

2.729 Industrial use. "Industrial use" means the use of land or buildings for the production, manufacture, warehousing, storage, or transfer of goods, products, commodities, or other wholesale items.

2.730 Intensive vegetation clearing. "Intensive vegetation clearing" means the complete removal of trees or shrubs in a contiguous patch, strip, row, or block.

2.731 I.S.T.S.-Individual Sewage Treatment System.

2.732 Land Use Permit - See Subdivision 3.1

2.733 Lot. "Lot" means a parcel of land designated by plat, metes and bounds, registered land survey, auditors plot, or other accepted means and separated from other parcels or portions by said description for the purpose of sale, lease, or separation.

2.734 Lot width. "Lot width" means the shortest distance between lot lines measured at the midpoint of the building line.

2.735 Nonconformity. "Nonconformity" means any legal use, structure or parcel of land already in existence, recorded, or authorized before the adoption of official controls or amendments thereto that would not have been permitted to become established under the terms of the official controls as now written, if the official controls had been in effect prior to the date it was established, recorded or authorized.

2.736 Ordinary high water level. "Ordinary high water level" means the boundary of public waters and wetlands, and shall be an election delineating the highest water level which has been maintained for a sufficient period of time to leave evidence upon the landscape, commonly that point where the natural vegetation changes from predominantly aquatic to predominantly terrestrial. For watercourses, the ordinary high water level is the elevation of the top of the bank of the channel. For reservoirs and flowages, the ordinary high water level is the operating elevation of the normal summer pool.

2.737 Planned Unit Development. "Planned Unit development" means a type of development characterized by a unified site design for a number of dwelling units or dwelling sites on a parcel, whether for sale, rent, or lease, and also usually involving clustering of these units or sites to provide areas of common open space, density increases, and a mix of structure operated as condominiums, time-share condominiums, cooperatives, of these, or cluster subdivisions of dwelling units, residential condominiums, townhouses, apartment buildings, campgrounds, recreational vehicle parks, resorts, hotels, motels, and conversions of structures and land uses to these uses.

2.738 Public waters. "Public waters" means any waters as defined in Minnesota Statutes, Subdivision 103G.005, subdivisions 15 and 18.

2.739 Residential planned unit development. "Residential planned unit development" means a use where the nature of residency is nontransient and the major or primary focus of the development is not service-oriented. For example, residential apartments, manufactured home parks, time-share condominiums, townhouses, cooperatives, and full fee ownership residences would be considered as residential planned unit developments. To qualify as a residential planned unit development, a development must contain at least five dwelling units or sites.

2.740 Rural Preservation Management District. As described in Subdivision VI of the Yellow Medicine Land & Related Resource Management Ordinance.

2.741 Semipublic use. "Semipublic use" means the use of land by a private, nonprofit organization to provide a public service that is ordinarily open to some persons outside the regular constituency of the organization.

2.742 Sensitive resource management. "Sensitive resource management" means the preservation and management of areas unsuitable for development in their natural state due to constraints such as shallow soils over groundwater or bedrock, highly erosive or expansive soils, steep slopes, susceptibility to flooding, or occurrence of flora or fauna in need of special protection.

2.743 Setback. "Setback" means the minimum horizontal distance between a structure, sewage treatment system, or other facility and an ordinary high water level, sewage treatment system, top of a bluff, road, highway, property line, or other facility.

2.744 Sewage treatment system. "Sewage treatment system" means a septic tank and soil absorption system or other individual or cluster type sewage treatment system as described and regulated in Subdivision 5.8 of this ordinance.

2.745 Sewer system. "Sewer system" means pipelines or conduits, pumping stations, and force main, and all other construction, devices, appliances, or appurtenances used for conducting sewage or industrial waste or other wastes to a point of ultimate disposal.

2.746 Shore impact zone. "Shore impact zone" means land located between the ordinary high water level of a public water and a line parallel to it at a setback of 50 percent of the structure setback.

2.747 Shoreland. "Shoreland" means land located within the following distances from public waters: 1,000 feet from the ordinary high water level of a lake, pond, or flowage; and 300 feet from a river or stream, or the landward extent of a floodplain designated by ordinance on a river or stream, whichever is greater. The limits of shorelands may be reduced whenever the waters involved are bounded by topographic divides which extend landward from the waters for lesser distances and when approved by the Commissioner.

2.748 Significant historic site. "Significant historic site" means any archaeological site, standing structure, or other property that meets the criteria for eligibility to the National Register of Historic Places or is listed in the State Register of Historic Sites, or is determined to be an unplatted cemetery that falls under the provisions of Minnesota Statutes, Subdivision 307.08. A historic site meets these criteria if it is presently listed on either register or if it is determined to meet the qualifications for listing after review by the Minnesota state archaeologist or the director of the Minnesota Historical Society. All unplatted cemeteries are automatically considered to be significant historic sites.

2.749 Steep Slope. "Steep slope" means land where agricultural activity or development is either not recommended or described as poorly suited due to slope steepness and the site's soil characteristics, as mapped and described in available county soil surveys or other technical reports, unless appropriate design and construction techniques and farming practices are used in accordance with the provisions of this ordinance.

Where specific information is not available, steep slopes are lands having average slopes over 12 percent, as measured over horizontal distances of 50 feet or more, that are not bluffs.

2.750 Structure. "Structure" means any building or appurtenance, including decks, except aerial or underground utility lines, such as sewer, electric, telephone, telegraph, gas lines, towers, poles, and other supporting facilities.

2.751 Subdivision. "Subdivision" means land that is divided for the purpose of sale, rent, or lease, including planned unit developments.

2.752 Surface water-oriented commercial use. "Surface water-oriented commercial use" means the use of land for commercial purposes, where access to and use of a surface water feature is an integral part of the normal conductance of business. Marinas, resorts, and restaurants with transient docking facilities are examples of such use.

.753 Toe of the bluff. "Toe of the bluff" means the point on a bluff where there is, as visually observed, a clearly identifiable break in the slope, from gentler to steeper slope above. If no break in the slope is apparent, the toe of bluff shall be determined to be the lower end of a 50-foot segment, measured on the ground, with an average slope exceeding 18 percent.

2.754 Top of the bluff. "Top of the bluff" means the point on a bluff where there is, as visually observed, a clearly identifiable break in the slope, from steeper to gentler slope above. If no break in

the slope is apparent, the top of bluff shall be determined to be the upper end of a 50-foot segment, measured on the ground, with an average slope exceeding 18 percent.

2.755 Variance. A Variance means the same as that term defined or described in Minnesota Statutes, Chapter 394.

2.756 Water-oriented accessory structure or facility. "Water-oriented accessory structure or facility" means a small, above ground building or other improvement, except stairways, fences, docks, and retaining walls, which, because of the relationship of its use to a surface water feature, reasonably needs to be located closer to public waters than the normal structure setback. Examples of such structures and facilities include boathouses, gazebos, screen houses, fish houses, pump houses, and detached decks.

2.757 Wetland. "Wetland" means a surface water feature classified as a wetland in the United State Fish and Wildlife Service Circular No. 39 (1971 edition).

Subdivision 3.0 – Administration

3.1 Land Use Permits Required

1. The construction of a building, addition to a building or accessory structure (including decks and signs) within the unincorporated areas of Yellow Medicine County.
2. The change of use of a building, accessory structure, or land within the unincorporated areas of Yellow Medicine County.
3. The placement of fill or excavation of materials within the Flood Plain, Shoreland, or Minnesota River Management Districts.
4. Prior to granting a Use Permit, the County Planning and Zoning Administrator shall determine that the applicant has obtained all necessary State and Federal Permits.
5. A permit authorizing a new or addition to an existing structure shall stipulate that an identified nonconforming sewage treatment system, as defined by Subdivision 5.8, shall be reconstructed or replaced in accordance with the provisions of this ordinance.

3.2 Individual Sewage Treatment Systems permits are required to be obtained prior to:

1. Any installation, alteration, modification, expansion or reconstruction of an Individual Sewage Treatment System.
2. Any construction of additional bedrooms to a dwelling.
3. The installation of mechanical equipment that requires additional water usage and gray water disposal such as but not limited to; garbage disposals, dish washers, water softeners etc.

3.3 Certificate of Zoning Compliance

The Zoning Administrator shall issue a certificate of zoning compliance for each activity requiring a permit as specified in Subdivision 3.1 of this ordinance. This certificate will specify that the use of

land conforms to the requirements of this ordinance. Any use, arrangement, or construction at variance with that authorized by permit shall be deemed a violation of this ordinance and shall be punishable as provided in Subdivision 2.3 of this ordinance.

3.4 Variances (see Sec. 6)

3.41 Variances may only be granted in accordance with Minnesota Statutes, Chapter 394. A variance may not circumvent the general purposes and intent of this ordinance. No variance may be granted that would allow any use that is prohibited in the zoning district in which the subject property is located. Conditions may be imposed in the granting of a variance to ensure compliance and to protect adjacent properties and the public interest. In considering a variance request, the board of adjustment must also consider whether the property owner has reasonable use of the land without the variance, whether the property is used seasonally or year-round, whether the variance is being requested solely on the basis of economic considerations, and the characteristics of development on adjacent properties.

3.42 The Board of Adjustment shall hear and decide requests for variances in accordance with the rules that it has adopted for the conduct of business. When a variance is approved after the Department of Natural Resources has formally recommended denial in the hearing record, the notification of the approved variance required in Subdivision 3.42 below shall also include the Board of Adjustment's summary of the public record/testimony and the findings of facts and conclusions which supported the issuance of the variances.

3.43 For existing developments, the application for variance must clearly demonstrate whether a conforming sewage treatment system is present for the intended use of the property. The variance, if issued, must require reconstruction of a nonconforming sewage treatment system.

3.5 Notifications to the Department of Natural Resources (See Sec. 5.7)

3.51 Copies of all notices of any public hearings to consider variances, amendments, or conditional uses under local shoreland management controls must be sent to the Commissioner or the Commissioner's designated representative and postmarked at least ten days before the hearings. Notices of hearings to consider proposed subdivisions/plats must include copies of the subdivision/plat.

3.52 A copy of approved amendments and subdivisions/plats, and final decisions granting variances or conditional uses under local shoreland management controls must be sent to the Commissioner or the Commissioner's designated representative and postmarked within ten days of final action.

Subdivision 4.0 Shoreland Classification System and Land Use Districts

4.1 Shoreland Classification System

The public waters of Yellow Medicine County have been classified below consistent with the criteria found in Minnesota Regulations, Part 6120.3300, and the Protected Waters Inventory Map for Yellow Medicine County, Minnesota.

4.11 The shoreland area for the waterbodies listed in Subdivisions 4.12 and 4.13 shall be as defined in Subdivision 2.744 and as shown on the Official Zoning Map.

4.12 Lakes

A. Natural Environment Lakes

<u>Name</u>	<u>Township</u>	<u>Identification #</u>
Miller Lake	Omro	87-102
Victors Slough	Fortier	87-116
School Grove	Posen	42-2
Lone Tree	Sioux Agency	87-13
Kvistad	Sioux Agency	87-15
Tyson	Posen	87-19
Wood Lake	Wood Lake	87-30
Mud	Wood Lake	87-32
Unnamed	Fortier	41-109
Lake Louie	Friendship	87-67
Curtis	Echo & Posen	87-16
Timm	Posen	87-17

4.13 Rivers and Streams

A. Agricultural Rivers

<u>Name</u>	<u>Beginning In</u>	<u>Ending In</u>
Lac Qui Parle	Border of Yellow Medicine and Lincoln	Border of Yellow Medicine and Lac Qui Parle Counties
Yellow Medicine	Border of Yellow Medicine and Lyon	Confluency with Minnesota R. Subdivision 28, T115N, R38W

B. All protected watercourses in Yellow Medicine County, shown on the Protected Waters Inventory Map for Yellow Medicine County, as copy of which is hereby adopted by reference, not given a classification in Subdivision 4.13A above, shall be considered a "Tributary".

4.2 Land Use District Descriptions

4.21 Criteria for Designation. The land use district in Section 4.22, and the delineation of a land use

districts' boundaries on the Official Zoning Map, must be consistent with the goals, policies, and objectives of the comprehensive land use plan and the following criteria, considerations and objectives:

A. General Considerations and Criteria for All Land Uses:

- (1) preservation of natural areas;
- (2) present ownership and development of shoreland areas;
- (3) shoreland soil types and their engineering capabilities;
- (4) topographic characteristics;
- (5) vegetative cover;
- (6) in-water physical characteristics, values, and constraints;
- (7) recreational use of the surface water;
- (8) road and service center accessibility;
- (9) socioeconomic development needs and plans as they involve water and related land resources;
- (10) the land requirements of industry which, by its nature, requires location in shoreland areas; and
- (11) the necessity to preserve and restore certain areas having significant historical or ecological value.

C. Factors and Criteria for Planned Unit Developments:

- (1) existing recreational use of the surface waters and likely increases in use associated with planned unit developments;
- (2) physical and aesthetic impacts of increased density;
- (3) suitability of lands for the planned unit development approach;
- (4) level of current development in the area; and
- (5) amounts and types of ownership of undeveloped lands.

4.22 Land Use District Descriptions. The land use districts provided below, and the allowable land uses therein for the given classifications of waterbodies, shall be properly delineated on the Official Zoning Map for the shorelands of this community. These land use districts are in conformance with the criteria specified in Minnesota Regulation, Part 6120.3200, Subp. 3:

A. Land Use Districts For Lakes

P- Permitted Use

C- Conditional Use

Natural Environment Lakes

(1) Rural Preservation Management District

-Forest management

P

-Sensitive resource management

P

-Agricultural: cropland and pasture

P

-Existing agricultural feedlots

C

-Parks & historic sites	C
-Extractive use	C
-Single residential	C
-Mining of metallic minerals and peat	P

Subdivision 5.0 – Zoning Requirements and Water Supply/Sanitary Provisions

5.1 Lot Area and Width Standards

5.11 Sewered and Unsewered Lakes-All lots for dwellings shall consist of a minimum of 3 acres.

5.12 River/Stream Lot Width Standards. *Footnote: All lots for dwellings shall consist of a minimum of 3 acres. Exception: Those dwelling within the Minnesota River Management District shall comply as required.

5.13 Additional Special Provisions.

A. Lots intended as controlled accesses to public waters or as recreation areas for use by owners of nonriparian lots within subdivisions are permissible and must meet or exceed the following standards:

- (1) They must meet the width and size requirements for residential lots, and be suitable for the intended uses of controlled access lots.
- (2) If docking, mooring, or over-water storage of more than six (6) watercraft is to be allowed at a controlled access lot, then the width of the lot (keeping the same lot depth) must be increased by the percent of the requirements for riparian residential lots for each watercraft beyond six, consistent with the following table:

Controlled Access Lot Frontage Requirements

Ratio of lake size to shorelength (acres/mile)	Required increase in frontage (percent)
Less than 100	25
100-200	20
201-300	15
301-400	10
Greater than 400	5

- (3) they must be jointly owned by all purchasers of lots in the subdivision or by all purchasers of nonriparian lots in the subdivision who are provided riparian

- access rights on the access lot; and
- (4) covenants or other equally effective legal instruments must be developed that specify which lot owners have authority to use the access lot and what activities are allowed. The activities may include watercraft launching, loading, storage, beaching, mooring, or docking. They must also include other outdoor recreational activities that do not significantly conflict with general public use of the public water or the enjoyment of normal property rights by adjacent property owners. Examples of the nonsignificant conflict activities include swimming, sunbathing, or picnicking. The covenants must limit the total number of watercraft allowed to be continuously moored, docked, or stored over water, and must require centralization of all common facilities and activities in the most suitable locations on the lot to minimize topographic and vegetation alterations. They must also require all parking areas, storage buildings, and other facilities to be screened by vegetation or topography as much as practical from view from the public water, assuming summer, leaf-on conditions.

5.2 Placement, Design and Height of Structures

5.21 Placement of Structures on Lots. When more than one setback applies to a site, structures and facilities must be located to meet all setbacks. Where structures exist on the adjoining lots on both sides of a proposed building site, structure setbacks may be altered without a variance to conform to the adjoining setbacks from the ordinary high water level, provided the proposed building site is not located in a shore impact zone or in a bluff impact zone. Structures shall be located as follows.

A. Structure and On-site Sewage System Setbacks (in feet) from Ordinary High Water Level*

Classes of Public Waters

	Structures		Sewage Treatment System
	Unsewered	Sewered	
Natural Environment	150	150	150
Rivers & Streams:			
Agriculture & Tributary	100	50	75

*One water-oriented accessory structure designed in accordance with Subdivision 5.22 of this ordinance may be set back a minimum distance often (10) feet from the ordinary high water level.

B. Additional Structure Setbacks. The following additional structure setbacks apply, regardless of the classification of the waterbody:

Setback From:	Setback (in feet)
(1) top of bluff;	30

(2) top of steep slope	30
(3) unplatted cemetery;	50
(4) right-of-way line of federal, state, or county highway; and	50
(5) right-of-way line of town road, public street, or other roads or streets not classified.	50

C. Bluff Impact Zones. Structures and accessory facilities, except stairways and landings, must not be placed within bluff impact zones.

D. Uses Without Water-Oriented Needs. Uses without water-oriented needs must be located on lots or parcels without public waters frontage, or, if located on lots or parcels with public waters frontage, must either be set back double the normal ordinary high water level setback or be substantially screened from view from the water by vegetation or topography, assuming summer, leaf-on conditions.

5.22 Design Criteria For Structures.

A. High Water Elevations. Structures must be placed in accordance with any floodplain regulations applicable to the site. Where these controls do not exist, the elevation to which the lowest floor, including basement, is placed or flood-proofed must be determined as follows:

- (1) for lakes, by placing the lowest floor at a level at least three feet above the highest known water level, or three feet above the ordinary high water level, whichever is higher;
- (2) for rivers and streams, by placing the lowest floor at least three feet above the flood of record, if data are available. If data are not available, by placing the lowest floor at least three feet above the ordinary high water level, or by conducting a technical evaluation to determine effects of proposed construction upon flood stages and flood flows and to establish a flood protection elevation. Under all three approaches, technical evaluations must be done by a qualified engineer or hydrologist consistent with parts 6120.5000 to 6120.6200 governing the management of flood plain areas. If more than one approach is used, the highest flood protection elevation determined must be used for placing structures and other facilities; and
- (3) water-oriented accessory structures may have the lowest floor placed lower than the elevation determined in this item if the structure is constructed of flood-resistant materials to the elevation, electrical and mechanical equipment is placed above the elevation and, if long duration flooding is anticipated, the structure is built to withstand ice action and wind-driven waves and debris.

B. Water-oriented Accessory Structures. Each lot may have one water-oriented accessory structure not meeting the normal structure setback in Subdivision 5.21 of this ordinance if this

water-oriented accessory structure complies with the following provisions:

- (1) the structure or facility must not exceed ten feet in height, exclusive of safety rails, and cannot occupy an area greater than 250 square feet. Detached decks must not exceed eight feet above grade at any point;
- (2) the setback of the structure or facility from the ordinary high water level must be at least ten feet;
- (3) the structure or facility must be treated to reduce visibility as viewed from public waters and adjacent shorelands by vegetation, topography, increased setbacks or color, assuming summer, leaf-on conditions;
- (4) the roof may be used as a deck with safety rails, but must not be enclosed or used as a storage area;
- (5) the structure or facility must not be designed or used for human habitation and must not contain water supply or sewage treatment facilities; and

C. Stairways, Lifts, and Landings. Stairways and lifts are the preferred alternative to major topographic alterations for achieving access up and down bluffs and steep slopes to shore areas. Stairways and lifts must meet the following design requirements:

- (1) stairways and lifts must not exceed four feet in width on residential lots. Wider stairways may be used for commercial properties, public open-space recreational properties, and planned unit developments;
- (2) landings for stairways and lifts on residential lots must not exceed 32 square feet in area. Landings larger than 32 square feet may be used for commercial properties, public open-space recreational properties, and planned unit developments;
- (3) canopies or roofs are not allowed on stairways, lifts, or landings;
- (4) stairways, lifts, and landings may be either constructed above the ground on posts or pilings, or place into the ground, provided they are designed and built in a manner that ensures control of soil erosion;
- (5) stairways, lifts, and landings must be located in the most visually inconspicuous portions of lots, as viewed from the surface of the public water assuming summer, leaf-on conditions, whenever practical; and
- (6) facilities such as ramps, lifts, or mobility paths for physically handicapped persons are also allowed for achieving access to shore areas, provided that the dimensional and performance standards of subitems (1) to (5) are compiled with in addition to the

requirements of Minnesota Regulations, Chapter 1340.

- D. Significant Historic Sites. No structure may be placed on a significant historic site in a manner that affects the values of the site unless adequate information about the site has been removed and documented in a public repository.
- E. Steep Slopes. The Zoning Administrator must evaluate possible soil erosion impacts and development visibility from public waters before issuing a permit for construction of sewage treatment systems, roads, driveways, structures, or other improvements on steep slopes. When determined necessary, conditions must be attached to issued permits to prevent erosion and to preserve existing vegetation, screening of structures, vehicles, and other facilities as viewed from the surface of public waters, assuming summer, leaf-on vegetation.

5.3 Shoreland Alterations

Alterations of vegetation and topography will be regulated to prevent erosion into public waters, fix nutrients, preserve shoreland aesthetics, preserve historic values, prevent bank slumping, and protect fish and wildlife habitat.

5.31 Vegetation Alterations.

- A. Vegetation alteration necessary for the construction of structures and sewage treatment systems and the construction of roads and parking areas regulated by Subdivision 5.4 of this ordinance are exempt from the vegetation alteration standards that follow.
- B. Removal or alteration of vegetation, except for agricultural and forest management uses as regulated in Subdivisions 5.62 and 5.63, respectfully, is allowed subject to the following standards:
 - (1) Intensive vegetation clearing within the shore and bluff impact zones and on steep slopes is not allowed. Intensive vegetation clearing for forest land conversion to another use outside of these areas is allowable as a conditional use if an erosion control and sedimentation plan is developed and approved by the soil and water conservation district in which the property is located.
 - (2) In shore and bluff impact zones and on steep slopes, limited clearing of trees and shrubs and cutting, pruning, and trimming of trees is allowed to provide a view to the water from the principal dwelling site and to accommodate the placement of stairways and landings, picnic areas, access paths, livestock watering areas, beach and watercraft access areas, and permitted water-oriented accessory structures or facilities, provided that:
 - (a) the screening of structures, vehicles, or other facilities as viewed from the water, assuming summer, leaf-on conditions, is not substantially reduced;

- (b) along rivers, existing shading of water surfaces is preserved; and
- (c) the above provisions are not applicable to the removal of trees, limbs, or branches that are dead, diseased, or pose safety hazards.

5.32 Topographic Alterations/Grading and Filling.

- A. Grading and filling and excavations necessary for the construction of structures, sewage treatment systems, and driveways under validly issued construction permits or these facilities do not require the issuance of a separate grading and filling permit. However, the grading and filling standards, in this Subdivision must be incorporated into the issuance of permits for construction of structures, sewage treatment systems, and driveways.
- B. Public road and parking areas are regulated by Subdivision 5.4 of this ordinance.
- C. Notwithstanding Items A. and B. above, a grading and filling permit will be required for:
 - (1) the movement of more than ten (10) cubic yards of material on steep slopes or within shore or bluff impact zones; and
 - (2) the movement of more than 50 cubic yards of material outside of steep slopes and shore and bluff impact zones.
- D. The following considerations and conditions must be adhered to during the issuance of construction permits, grading and filling permits, conditional use permits, variances and subdivision approvals:
 - (1) Grading or filling in any type 2, 3, 4, 5, 6, 7, or 8 wetland must be evaluated to determine how extensively the proposed activity would affect the following functional qualities of the wetland* : (this shall be determined by the SWCD Wetlands Officer)
 - (a) sediment and pollutant trapping and retention
 - (b) storage of surface runoff to prevent or reduce flood damage;
 - (c) fish and wildlife habitat;
 - (d) recreational use;
 - (e) shoreline or bank stabilization; and
 - (f) noteworthiness, including special qualities such as historic significance, critical habitat for endangered plants and animals, or others

*This evaluation must also include a determination of whether the wetland alteration being proposed requires permits, reviews, or approvals by other local, state, or federal agencies such as a watershed district, the Minnesota Department of Natural Resources, or the United States Army Corps of Engineers. The applicant will be so

advised.

- (2) Alterations must be designed and conducted in a manner that ensures only the smallest amount of bare ground is exposed for the shortest time possible;
- (3) Mulches or similar materials must be used, where necessary, for temporary bare soil coverage, and a permanent vegetation cover must be established as soon as possible;
- (4) Methods to minimize soil erosion and to trap sediments before they reach any surface water feature must be used;
- (5) Altered areas must be stabilized to acceptable erosion control standards consistent with the field office technical guides of the local soil and water conservation districts and the United States Soil Conservation Service;
- (6) Fill or excavated material must not be placed in a manner that creates an unstable slope;
- (7) Plans to place fill or excavated material on steep slopes must be reviewed by qualified professionals for continued slope stability and must not create finished slopes of 30 percent or greater;
- (8) Fill or excavated material must not be placed in bluff impact zones;
- (9) Any alterations below the ordinary high water level of public waters must first be authorized by the Commissioner under Minnesota Statutes, Subdivision 103G.005;
- (10) Alterations of topography must only be allowed if they are accessory to permitted or conditional uses and do not adversely affect adjacent or nearby properties; and
- (11) Placement of natural rock riprap, including associated grading of the shoreline and placement of a filter blanket, is permitted if the finished slope does not exceed three feet horizontal to one foot vertical, the landward extent of the riprap is within ten feet of the ordinary highwater level, and the height of the riprap above the ordinary high water level does not exceed three feet.

- E. Connections to public waters. Excavations where the intended purpose is connection to a public water, such as boat slips, canals, lagoons, and harbors, must be controlled by local shoreland controls. Permission for excavations may be given only after the Commissioner has approved the proposed connection to public waters.

5.4 Placement and Design of Roads, Driveways and Parking Areas

5.41 Public and private roads and parking areas must be designed to take advantage of natural vegetation and topography to achieve maximum screening from view from public waters. Documentation must be provided by a qualified individual that all roads and parking areas are designed and constructed to minimize and control erosion to public waters consistent with the field office technical guides of the local soil and water conservation district, or other applicable technical materials.

5.42 Roads, driveways, and parking areas must meet structure setbacks and must not be placed within bluff and shore impact zones, when other reasonable and feasible placement alternatives exist. If no alternatives exist, they may be placed within these areas, and must be designed to minimize adverse impacts.

5.43 Public and private watercraft access ramps, approach roads, and access-related parking areas may be placed within shore impact zones provided the vegetative screening and erosion control conditions of this subpart are met. For private facilities, the grading and filling provisions of Subdivision 5.32 of this ordinance must be met.

5.5 Stormwater Management

The following general and specific standards shall apply:

5.51 General Standards:

- A. When possible, existing natural drainageways, wetlands, and vegetated soil surfaces must be used to convey, store, filter, and retain stormwater runoff before discharge to public waters.
- B. Development must be planned and conducted in a manner that will minimize the extent of disturbed areas, runoff velocities, erosion potential, and reduce and delay runoff volumes. Disturbed areas must be stabilized and protected as soon as possible and facilities or methods used to retain sediment on the site.
- C. When development density, topographic features, and soil and vegetation conditions are not sufficient to adequately handle stormwater runoff using natural features and vegetation, various types of constructed facilities such as diversions, settling basins, skimming devices, dikes, waterways, and ponds may be used. Preference must be given to designs using surface drainage, vegetation, and infiltration rather than buried pipes and man-made materials and facilities.

5.52 Specific Standards:

- A. Impervious surface coverage of lots must not exceed 25 percent of the lot area.
- B. When constructed facilities are used for stormwater management, documentation must be provided by a qualified individual that they are designed and installed consistent with the field office technical guide of the local soil and water conservation districts.
- C. New constructed stormwater outfalls to public waters must provide for filtering or settling of suspended solids and skimming of surface debris before discharge.

- D. Shall comply with all stormwater provisions established by the Minnesota Pollution Control Agency and the Board of Water and Soil Resources (if applicable).

5.6 Special Provisions for Commercial, Industrial, Public/Semipublic, Agricultural, Forestry and Extractive Uses and Mining of Metallic Minerals and Peat

5.61 Standards for Commercial, Industrial, Public, and Semipublic Uses

- A. Surface water-oriented commercial uses and industrial, public, or semipublic uses with similar needs to have access to and use of public waters may be located on parcels or lots with frontage on public waters. Those uses with water-oriented needs must meet the following standards:
- (1) in addition to meeting impervious coverage limits, setbacks, and other zoning standards in this ordinance, the uses must be designed to incorporate topographic and vegetative screening of parking areas and structures;
 - (2) uses that require short-term watercraft mooring for patrons must centralize these facilities and design them to avoid obstructions of navigation and to be the minimum size necessary to meet the need; and
 - (3) uses that depend on patrons arriving by watercraft may use signs and lighting to convey needed information to the public, subject to the following general standards:
 - (a) no advertising signs or supporting facilities for signs may be placed in or upon public waters. Signs conveying information or safety messages may be placed in or on public waters by a public authority or under a permit issued by the county sheriff,
 - (b) signs may be placed, when necessary, within the shore impact zone if they are designed and sized to be the minimum necessary to convey needed information. They must only convey the location and name of the establishment and the general types of goods or services available. The signs must not contain other detailed information such as product brands and prices, must not be located higher than ten feet above the ground, and must not exceed 32 square feet in size. If illuminated by artificial lights, the lights must be shielded or directed to prevent illumination out across public waters; and
 - (c) other outside lighting may be located within the shore impact zone or over public water if it is used primarily to illuminate potential safety hazards and is shielded or otherwise directed to prevent direct illumination out across public waters. This does not preclude use of navigational lights.
- B. Uses without water-oriented needs must be located on lots or parcels without public waters frontage, or, if located on lots or parcels with public waters frontage, must either be set back double the normal ordinary high water level setback or be

substantially screened from view from the water by vegetation or topography, assuming summer, leaf-on conditions.

5.7 Conditional Uses (see Sec. 3.4)

Conditional uses allowable within in shoreland areas shall be subject to the review and approval procedures, and criteria and conditions for review of conditional uses established community-wide. The following additional evaluation criteria and conditions apply within shoreland areas:

5.71 Evaluation criteria. A thorough evaluation of the waterbody and the topographic, vegetation, and soils conditions on the site must be made to ensure:

- (1) the prevention of soil erosion or other possible pollution of public waters, both during and after construction;
- (2) the visibility of structures and other facilities as viewed from public waters is limited;
- (3) the site is adequate for water supply and on-site sewage treatment; and
- (4) the types, uses, and numbers of watercraft that the project will generate are compatible in relation to the suitability of public waters to safely accommodate these watercraft.

5.72 Conditions attached to conditional use permits. The County Board of Commissioners, upon consideration of the criteria listed above and the purposes of this ordinance, shall attach such conditions to the issuance of the conditional use permits as it deems necessary to fulfill the purposes of this ordinance. Such conditions may include, but are not limited to, the following:

- (1) increased setbacks from the ordinary high water level;
- (2) limitations on the natural vegetation to be removed or the requirement that additional vegetation be planted; and
- (3) Special provisions for the location, design, and use of structures, sewage treatment systems, watercraft launching and docking areas, and vehicle parking areas.

5.8 Water Supply and Sewage Treatment

5.81 Water Supply. Any public or private supply of water for domestic purposes must meet or exceed standards for water quality of the Minnesota Department of Health and the Minnesota Pollution Control Agency.

5.82 Sewage Treatment. Any premises used for human occupancy must be provided with an adequate method of sewage treatment, as follows:

- A. Publicly-owned sewer systems must be used where available.
- B. All private sewage treatment systems must meet or exceed the Minnesota Pollution Control Agency's standards for individual sewage treatment systems contained in the document titled, "Individual Sewage Treatment Systems Standards, Chapter 7080", a

copy of which is hereby adopted by reference and declared to be a part of this ordinance.

- C. On-site sewage treatment systems must be set back from the ordinary high water level in accordance with the setbacks contained in Subdivision 5.21 of this ordinance.
- D. If the determination of a site's suitability cannot be made with publicly available, existing information, it shall then be the responsibility of the applicant to provide sufficient soil borings and percolation tests from on-site field investigations as deemed necessary by the County ISTS Inspector.
- E. Nonconforming sewage treatment systems shall be regulated and upgraded in accordance with Subdivision 6.3 of this ordinance.

Subdivision 6.0 – Nonconformities (See Subdivision 3.3)

All legally established nonconformities as of the date of this ordinance may continue, but they will be managed according to applicable state statutes and other regulations of this community for the subjects of alterations and additions, repair after damage, discontinuance of use, and intensification of use; except that the following standards will also apply in shoreland areas:

6.1 Construction on nonconforming lots of record

- A. Lots of record in the office of the county recorder on the date of enactment of local shoreland controls that do not meet the requirements of Subdivision 5. 1 of this ordinance may be allowed as building sites without variances from lot size requirements provided the use is permitted in the zoning district, the lot has been in separate ownership from abutting lands at all times since it became substandard, was created compliant with official controls in effect at the time, and sewage treatment and setback requirements of this ordinance are met.
- B. A variance from setback requirements must be obtained before any use, sewage treatment system, or building permit is issued for a lot. In evaluating the variance, the board of adjustment shall consider sewage treatment and water supply capabilities or constraints of the lot and shall deny the variance if adequate facilities cannot be provided.
- C. If, in a group of two or more contiguous lots under the same ownership, any individual lot does not meet the requirements of Subdivision 5.1 of this ordinance the lot must not be considered as a separate parcel of land for the purposes of sale or development. The lot must be combined with the one or more contiguous lots so they equal one or more parcels of land, each meeting the requirements of Subdivision 5.1 of this ordinance as much as possible.

6.2 Additions/expansions to nonconforming structures

- A. All additions or expansions to the outside dimensions of an existing nonconforming structure must meet the setback, height, and other requirements of Subdivision 5.0 of this ordinance. Any deviation from these requirements must be authorized by a variance pursuant to Subdivision 3.3.
- B. Deck additions may be allowed without a variance to a structure not meeting the required setback from the ordinary high water level if all of the following criteria and standards are met:
 - (1) the structure existed on the date the structure setbacks were established;
 - (2) a thorough evaluation of the property and structure reveals no reasonable location for a deck meeting or exceeding the existing ordinary high water level setback of the structure;
 - (3) the deck encroachment toward the ordinary high water level does not exceed 15 percent of the existing setback of the structure from the ordinary high water level or does not encroach closer than 30 feet, whichever is more restrictive; and
 - (4) the deck is constructed primarily of wood, and is not roofed or screened.

6.3 Nonconforming sewage treatment systems.

- A. A sewage treatment system not meeting the requirements of Subdivision 5.8 of this ordinance must be upgraded, at a minimum, at any time a permit or variance of any type is required for any improvement on, or use of, the property. For the purposes of this provision, a sewage treatment system shall not be considered nonconforming if the only deficiency is the sewage treatment system's improper setback from the ordinary high water level.
- B. The governing body of Yellow Medicine County has notified the Commissioner of its program to identify nonconforming sewage treatment systems. Yellow Medicine County will require upgrading or replacement of any nonconforming system, identified to be nonconforming, by a reasonable period of time which will not exceed five years. Sewage systems installed according to all applicable local shoreland management standards adopted under Minnesota Statutes, Subdivision 105.485, in effect at the time of installation may be considered as conforming unless they are determined to be failing, except that systems using cesspools, leaching pits, seepage pits, or other deep disposal methods, or systems with less soil treatment area separation above groundwater than required by the Minnesota Pollution Control Agency's Chapter 7080 for design of on-site sewage treatment systems, shall be considered nonconforming.

Subdivision 7.0 – Subdivision/Platting Provisions

7. 11 Land suitability. Each lot created, through subdivision, including planned unit developments authorized under Subdivision 8.0 of this ordinance, must be suitable in its natural state for the proposed use with minimal alteration. Suitability analysis by the local unit of government shall consider susceptibility to flooding, existence of wetlands, soil and rock formations with severe limitations for development, severe erosion potential, steep topography, inadequate water supply or sewage treatment capabilities, near-shore aquatic conditions unsuitable for water-based recreation, important fish and wildlife habitat, presence of significant historic sites, or any other feature of the natural land likely to be harmful to the health, safety, or welfare of future residents of the proposed subdivision or of the community.

7. 12 Consistency with other controls. Subdivisions must conform to all official controls of this community. A subdivision will not be approved where a later variance from one or more standards in official controls would be needed to use the lots for their intended purpose. In areas not served by publicly owned sewer and water systems, a subdivision will not be approved unless domestic water supply is available and a sewage treatment system consistent with Subdivisions 5.2 and 5.8 can be provided for every lot. Each lot shall meet the minimum lot size and dimensional requirements of Subdivision 5.1, including at least a minimum contiguous lawn area, that is free of limiting factors sufficient for the construction of two standard soil treatment systems. Lots that would require use of holding tanks must not be approved.

7. 13 Information requirements. Sufficient information must be submitted by the applicant for the community to make a determination of land suitability. The information shall include at least the following:

- (1) topographic contours at ten-foot intervals or less from United States Geological Survey maps or more accurate sources, showing limiting site characteristics;
- (2) the surface water features required in Minnesota Statutes, Subdivision 05.02, Subdivision 1, to be shown on plats, obtained from United States Geological Survey quadrangle topographic maps or more accurate sources;
- (3) adequate soils information to determine suitability for building and on-site sewage treatment capabilities for every lot from the most current existing sources or from field investigations such as soil borings, percolation tests, or other methods;
- (4) information regarding adequacy of domestic water supply; extent of anticipated vegetation and topographic alterations; near-shore aquatic conditions, including depths, types of bottom sediments, and aquatic vegetation; and proposed methods for controlling stormwater runoff and erosion, both during and after construction activities;
- (5) location of 100-year flood plain areas and floodway districts from existing adopted maps or data; and

- (6) a line or contour representing the ordinary high water level, the "toe" and the "top" of bluffs, and the minimum building setback distances from the top of the bluff and the lake or stream.

7. 14 Dedications. When a land or easement dedication is a condition of subdivision approval, the approval must provide easements over natural drainage or pending areas for management of stormwater and significant wetlands.

7. 15 Platting. All subdivisions that create five or more lots or parcels that are 2-1/2 acres or less in size shall be processed as a plat in accordance with Minnesota Statutes, Chapter 505. No permit for construction of buildings or sewage treatment systems shall be issued for lots created after these official controls were enacted unless the lot was approved as part of a formal subdivision.

7. 16 Controlled Access or Recreational Lots. Lots intended as controlled accesses to public waters or for recreational use areas for use by nonriparian lots within a subdivision must meet or exceed the sizing criteria in Subdivision 5.14 of this ordinance.

APPENDIX B

ORDINANCE CERTIFICATION CHECKLIST [CITY/COUNTY NAME]

Once all the below listed tasks are completed, please sign and return the checklist and all required documents to the appropriate DNR area hydrologist.

1. _____ Date of published hearing notice.
2. _____ Date of postmark of hearing notice to Commissioner of the Department of Natural Resources/area hydrologist.
3. _____ Date of Hearings
4. _____ Date of ordinance adoption.
5. _____ If ordinance is published in entirety, date and affidavit of newspaper publication of adopted ordinance (Include three copies of ordinance).
6. _____ If only ordinance summary published, date and affidavit of newspaper publication of ordinance title and summary along with certified copy of adopted ordinance in its entirety from clerk/auditor.
(Include three copies of ordinance)
7. _____ Date of official filing of adopted ordinance with county recorder
_____ record book number
_____ page number).
8. Yes ____ No ____ Board of Adjustment and appeals has been established?

*Note: Cities under charter must also submit a list of any additional requirements for hearings, notices, etc, stated in their charter. Please specify:

Signature of Clerk/Auditor